

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
)	
ROGER THOMAS SCAGGS)	EB Docket No. 03-241
)	File No. EB-02-IH-0886
Advanced Class Amateur Radio Operator and)	
Licensee of Amateur Radio Station W5EBC)	

ORDER TO SHOW CAUSE

Adopted: November 20, 2003

Released: November 21, 2003

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. By this Order to Show Cause, and pursuant to Sections 312(a) and (c) of the Communications Act of 1934, as amended (the "Act"),¹ we commence a hearing proceeding before a Commission administrative law judge to determine whether Roger Thomas Scaggs, the licensee of the above-captioned Amateur Radio Station and Advanced Class Operator license, is qualified to remain a Commission licensee in light of his 1998 felony conviction for murder and whether his authorization should be revoked.

II. BACKGROUND

2. Approximately six months after the Commission granted Mr. Scaggs' subject amateur radio license,² on November 16, 1998, he was convicted for the March 6, 1996, murder of Penny Scaggs, his wife of thirty-five years.³ The record in that case showed that Mr. Scaggs beat to death his wife with a galvanized lead pipe and then stabbed her several times in their home.⁴ Mr. Scaggs was convicted and sentenced by the jury to a prison term of thirty-two (32) years, and he was fined Ten Thousand Dollars (\$10,000.00).⁵ His conviction was affirmed and his request for rehearing overruled on June 22, 2000.⁶

¹ See 47 U.S.C. §§ 312(a) and (c).

² On May 28, 1998, the Commission granted Mr. Scaggs' "Application for Authorization in the Ship, Aircraft, Amateur, Restricted and Commercial Operator, and the General Mobile Radio Services" (FCC Form 605), File No. 9504030452 (dated May 22, 1995) and issued him the above-captioned amateur authorization.

³ See *State of Texas v. Scaggs*, No. 963026 (299th Judicial District of Travis County, Texas, February 5, 1999 (unpublished); see also Texas Penal Code § 19.02(b)(1).

⁴ See *State of Texas v. Scaggs*, 18 S.W. 3d 277 (Ct. App. Texas, Austin 2000).

⁵ *Id.*

⁶ *Id.*

III. DISCUSSION

3. Section 312(a)(2) of the Act provides that the Commission may revoke any license on the basis of “conditions coming to the attention of the Commission which would warrant it in refusing to grant a license or permit on the original application.”⁷ Among the factors that the Commission considers in its review of applications to determine whether the applicant has the requisite qualifications to operate the station for which authority is sought is the character of the applicant.⁸ Before revoking a license, the Commission must serve the licensee with an order to show cause why revocation should not issue and must provide the licensee with an opportunity for hearing.⁹

4. In assessing character qualifications in broadcast licensing matters, the Commission considers, as relevant, “evidence of any conviction for misconduct constituting a felony.”¹⁰ The Commission believes that “[b]ecause all felonies are serious crimes, any conviction provides an indication of an applicant’s or licensee’s propensity to obey the law” and to conform to provisions of both the Act and the agency’s rules and policies.¹¹ The Commission has consistently applied these broadcast character standards to applicants and licensees in the Amateur Radio Service.¹² Thus, very serious felonies raise potential questions regarding an amateur licensee’s qualifications.

5. Here, Mr. Scaggs’ murder conviction¹³ raises very serious questions as to whether he possesses the requisite character qualifications to be and to remain a Commission licensee and whether his captioned license should be revoked. For this reason, we are designating the matter for hearing before a Commission administrative law judge.

IV. ORDERING CLAUSES

6. ACCORDINGLY, IT IS ORDERED that, pursuant to Sections 312(a) and (c) of the Communications Act of 1934, as amended,¹⁴ and authority delegated pursuant to Sections 0.111, 0.311,

⁷ 47 U.S.C. § 312(a)(2).

⁸ 47 U.S.C. § 308(b).

⁹ 47 U.S.C. § 312(c).

¹⁰ *Policy Regarding Character Qualifications in Broadcast Licensing, Amendment of Part 1, the Rules of Practice and Procedure, Relating to Written Responses to Commission Inquiries and the Making of Misrepresentation to the Commission by Applicants, Permittees, and Licensees, and the Reporting of Information Regarding Character Qualifications*, Policy Statement and Order, 5 FCC Rcd 3252, 3252 (1990) (“1990 Character Order”).

¹¹ *Id.*

¹² See, e.g., *Schoenbohm v. FCC*, 204 F.3d 243, 246-49 (D.C. Cir. 2000), *cert. denied*, 531 U.S. 968 (2000) (affirming the Commission’s denial of an amateur radio operator’s license renewal application based on the licensee’s felony conviction for computer fraud, as well as its lack of candor regarding such conviction); *George E. Rodgers*, Hearing Designation Order, 10 FCC Rcd 3978 (WTB 1995) (finding that an amateur radio operator licensee’s felony conviction for indecent assault upon and corruption of minors raised a material question of fact regarding his character and qualifications to remain a Commission licensee); *Thomas M. Haynie*, Order to Show Cause and Suspension Order, 7 FCC Rcd 4994 (FOB 1992), *affirmed and licenses revoked*, 7 FCC Rcd 7291 (PRB 1992) (revoking general radiotelephone operator, amateur advanced class radio and amateur radio station licenses on the basis of licensee’s felony conviction for intentional interference with satellite communications); *Jerry E. Gastil*, Order to Show Cause, 4 FCC Rcd 3977 (PRB, FOB 1989) (finding that a general radio operator and amateur radio station licensee’s felony conviction for interfering with governmental radio communications raised serious questions regarding his character and qualifications to remain a Commission licensee).

¹³ The fact of Mr. Scaggs’ felony conviction is *res judicata* and will not be retried in this hearing.

¹⁴ 47 U.S.C. §§ 312(a) and (c).

and 1.91(a), of the Commission's rules,¹⁵ Roger Thomas Scaggs is hereby ORDERED TO SHOW CAUSE why his authorization for Amateur Radio Advanced Class License W5EBC SHOULD NOT BE REVOKED. Roger Thomas Scaggs shall appear before an administrative law judge at a time and place to be specified in a subsequent order and provide evidence upon the following issues:

- (a) to determine the effect of Roger Thomas Scaggs' felony conviction on his qualifications to be and to remain a Commission licensee; and
- (b) to determine, in light of the evidence adduced pursuant to the foregoing issue, whether Roger Thomas Scaggs is qualified to be and to remain a Commission licensee and whether his Amateur Radio Advanced Class License W5EBC be should revoked.

7. IT IS FURTHER ORDERED that, pursuant to Section 312(c) of the Communications Act of 1934, as amended, and Section 1.91(c) of the Commission's rules,¹⁶ to avail himself of the opportunity to be heard and the right to present evidence in the hearing in this proceeding, Roger Thomas Scaggs, in person or by his attorney, SHALL FILE with the Commission, within thirty (30) days of the release of this Order to Show Cause, a written appearance stating that he will appear on the date fixed for hearing and present evidence on the issues specified herein.

8. IT IS FURTHER ORDERED that, pursuant to Section 1.92(c) of the Commission's rules, if Roger Thomas Scaggs fails to timely file a written appearance within the thirty (30)-day period, or has not filed a petition to accept, for good cause shown, a written appearance beyond the expiration of the thirty (30)-day period, the right to a hearing shall be deemed to be waived.¹⁷ Where a hearing is waived, the presiding administrative law judge shall, at the earliest practicable date, issue an order terminating the hearing proceeding and certifying the case to the Commission.¹⁸

9. IT IS FURTHER ORDERED that, pursuant to Section 312(d) of the Communications Act of 1934, as amended,¹⁹ and Section 1.91(d) of the Commission's rules,²⁰ the burden of proceeding with the introduction of evidence and the burden of proof with respect to both of the issues specified above SHALL BE on the Enforcement Bureau.

10. IT IS FURTHER ORDERED that, the a copy of this ORDER TO SHOW CAUSE shall be sent, by Certified Mail, Return Receipt Requested, to Roger Thomas Scaggs, RR 2 Box 4400, Gatesville, Texas 76597, and to his counsel, Charles R. Burton, Esq., Minton, Burton, Foster & Collins, 1100 Guadalupe Street, Austin, Texas 78701.

¹⁵ 47 C.F.R. §§ 0.111, 0.311 and 1.91(a).

¹⁶ 47 C.F.R. § 1.91(c).

¹⁷ 47 C.F.R. § 1.92(a).

¹⁸ 47 C.F.R. § 1.92(c).

¹⁹ 47 U.S.C. § 312(d).

²⁰ 47 C.F.R. § 1.91(d).

11. IT IS FURTHER ORDERED that, the Secretary of the Commission SHALL CAUSE to have this Order to Show Cause or a summary thereof published in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau